

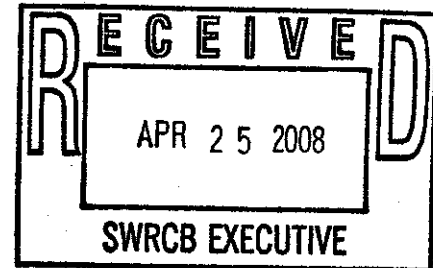


California Stormwater Quality Association™

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

April 28, 2008

Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



Subject: Comment Letter – Baseline Enforcement Report

Dear Ms. Townsend:

On behalf of the California Stormwater Quality Association (CASQA), I am writing to you today to offer comments regarding the Baseline Enforcement Report FY 2006-2007 (Draft Baseline Report). CASQA recognizes that, among other things, the Draft Baseline Report 1) establishes a baseline of enforcement-related information for determining where and how modifications might be made to enforcement resources to obtain strategic results and, 2) recommends performance-based measures to gauge the effectiveness of future enforcement efforts. We appreciate the opportunity to provide comments on the Draft Baseline Report and have also actively participated in the recent efforts to evaluate and improve the Enforcement Policy including providing written comments on the Draft Water Quality Enforcement Policy (February 6, 2008), attending the June 28, 2007 workshop and providing written comments on June 26, 2007. Where there is a nexus, our comments on the Draft Baseline Report are consistent with and expand upon the earlier comments that we provided on the Draft Water Quality Enforcement Policy.

CASQA was formed in 1989 to recommend approaches to the State Water Resources Control Board (State Water Board) for stormwater quality management in California and, in particular, the development and implementation of stormwater permitting processes. CASQA is composed of stormwater quality management organizations and individuals, including cities, counties, special districts, industries, and consulting firms throughout the state. Our membership provides stormwater quality management services to over 26 million people in California and includes almost every Phase I municipal program in the State.

CASQA recognizes that the Baseline Enforcement Report is important because future enforcement efforts will be evaluated in the same manner and compared to this report to assist in determining the improvements and effectiveness of the program. While CASQA supports the use of performance-based measures to determine the effectiveness of the enforcement program, we have recommendations for your consideration. Our recommendations are outlined below in the form of general comments.

General Comments

- **Need to Enhance the Identified Performance Measures**

As you may already know, CASQA spent several years developing a Municipal Program Effectiveness Assessment Guidance Document (Guidance Document)¹. The Guidance Document describes how to use a variety of assessment methods to evaluate program-specific desired outcomes and goals. While the Guidance Document methods were primarily developed for municipal stormwater programs, in many cases the methods and measures have wider applicability. ***CASQA supports the establishment of the performance measures identified within the Draft Baseline Report (page 2) and recommends that the State Water Board also consider enhancing the identified Performance Measures (see bold, italicized entries) by adding/modifying the following.*** Using this more comprehensive set of performance measures will allow the State Water Board to track the activities that have been completed, identify behavior changes that have occurred, and estimate loadings that have been reduced as a result of the enforcement efforts.

Documenting Activities (CASQA Outcome Level 1)	Changing Behavior (CASQA Outcome Level 3)	Reducing Loads From Sources (CASQA Outcome Level 4)
○ <i># of Permittees Required to Submit a Self Monitoring Report</i>	○ <i># and % of Facilities Permittees</i> Requiring an Enforcement Response Action	○ <i>Estimated Pounds of Pollutant Removed/Reduced (Water and Soil)</i>
○ <i># Self Monitoring Reports Received</i>	○ <i># and % of Facilities Permittees</i> with Violations Subject to MMPs that are Addressed	○ <i>Wetlands/Beach/Creek Miles Restored</i>
○ # Self Monitoring Reports Reviewed	○ Compliance Rates	
○ <i># of Referrals Received From Local Agencies</i>	○ <i># and % of Facilities Permittees</i> Repeating Violations (Recidivism)	
○ <i># of Inspections Required</i>		
○ # and % of Inspections Conducted		
○ <i># of Audits Conducted</i>	○ % of MS4s in compliance	
○ # and Type of Enforcement Actions		
○ # and Amount of Penalties Assessed		

¹ California Stormwater Quality Association Municipal Stormwater Program Effectiveness Assessment Guidance, May 2007.

- **Need to Provide Initial Data for Performance Measures**

Although the Draft Baseline Report identifies recommended performance measures (page 2), the Report does not provide baseline data for many of the measures. While CASQA recognizes that the Water Boards may not have the necessary data to report out on all of the identified performance measures, to the extent possible, ***CASQA recommends that the Draft Baseline Report assess available data for the identified performance measures (including the additional performance measures identified above) so that the baseline information is more comprehensive.***

- **Need for Additional Guidance to Achieve Statewide Consistency**

CASQA agrees that enforcement should be fair, firm, and consistent throughout the state, and be conducted in a timely manner. In addition, we generally agree with the improvements to the existing enforcement efforts that are identified on page 2 of the Draft Baseline Report. However, in order to assist in achieving statewide consistency and institutionalizing some of the improvements identified (such as #1, #2, #3, and #11) ***CASQA strongly recommends that the State Water Board develop an Enforcement Consistency Guidance document (Guidance document).*** This Guidance Document would provide the detail necessary to ensure that the Enforcement Policy is interpreted, applied, and reported on in a similar manner throughout the state. An example includes the Enforcement Consistency Guidance document that was developed by Orange County for their stormwater program².

- **Need to Fully Consider the Stormwater Programs**

Although the Draft Baseline Report identifies that the National Pollutant Discharge Elimination System (NPDES) Stormwater Program consists of three distinct components (municipal, industrial, and construction), the Report inappropriately combines all three components for reporting and effectiveness assessment purposes (pgs 43-46, 57). Combining the data from all three components "masks" the issues from each and will likely confuse and skew the interpretations. For example, Table 7 identifies the inspections conducted in FY 06-07; however, it is unclear of the permits inspected, which ones were construction versus industrial and if municipal permit audits were included in this figure. Since the municipal, construction, and industrial components are distinct stormwater programs and have different implementation, monitoring, and reporting requirements and standards of compliance, ***CASQA strongly recommends that the State Water Board distinguish the municipal, construction, and industrial stormwater programs as distinct components and report out on each of them separately.*** By doing so, the State Water Board will be able to better identify the strengths and weaknesses of each and identify the necessary modifications.

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http://www.ocwatersheds.com/StormWater/PDFs/2003_DAMP/2003_DAMP_Section_4_Exhibit_4_I_Enforcement_Consistency_Guide.pdf

- **Need for Linkage Between Violation Priorities and Enforcement Actions**

The Draft Baseline Report should differentiate between the different types of enforcement actions instead of combining all of the data together. Although the Water Quality Enforcement Policy is currently being revised, it is our understanding that the Policy will provide further differentiation of violations for enforcement prioritization purposes. ***CASQA recommends that the Draft Baseline Report and/or future Enforcement Reports clearly provide a nexus between the types of enforcement actions and the priority violations.*** For example, the information reported on page 57 of the Report does not distinguish between the type and/or prioritization of enforcement actions and, instead, combines all of the enforcement actions together. As a result, it is unclear what types of enforcement actions the "violations" are referring to and the degree of severity. This differentiation is important because it can also assist in identifying overall improvements.

In closing, we hope that our comments will assist you in identifying additional improvements to the Draft Baseline Enforcement Report 2006-2007. Please feel free to contact me at (714) 567-6360 or Geoff Brosseau, our Executive Director at (650) 365-8620 if you have any questions or would like to discuss this further.

Very truly yours,



Chris Crompton, Chair
California Stormwater Quality Association

cc: Tam Doduc, Chair, State Water Board
Dorothy Rice, Executive Director, State Water Board
Mark Bradley, State Water Board
Bruce Fujimoto, State Water Board
CASQA Executive Program Committee
CASQA Board of Directors